

FILED

OCT 21 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FEDERICO RODRIGUEZ-OLVEDO,

Defendant - Appellant.

No. 04-50481

D.C. No. CR-03-00286-SVW-01

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted October 11, 2005^{**}

Before: T.G. NELSON, WARDLAW, and TALLMAN, Circuit Judges.

Federico Rodriguez-Olvedo appeals his 57-month sentence imposed following a guilty-plea conviction for being an illegal alien found in the United

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

States following deportation and conviction, in violation of 8 U.S.C. § 1326(a) and (b)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291.

Because appellant was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Hermoso-Garcia*, 413 F.3d 1085, 1089-90 (9th Cir. 2005).

SENTENCE REMANDED.